

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JAMES TICHGELAAR
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-117
Case No. 71-746

S.S.A. No.

THE NORTHWEST PAPER COMPANY
(Employer)

Employer Account No.

The claimant appealed from Referee's Decision No. S-3485 which held that he was disqualified for benefits under section 1256 of the California Unemployment Insurance Code on the ground he had voluntarily left his work without good cause. The decision also relieved the employer's reserve account of benefit charges. The claimant, through counsel, has submitted written argument. None has been received from the Department or the employer.

STATEMENT OF FACTS

The claimant was last employed by the above named employer as a mail handler from July 21, 1969 until July 17, 1970 when he resigned in order to leave the Los Angeles metropolitan area and move to Portland, Oregon. The claimant was living in Montclair, California, several miles from the employer's business which is located in Pomona. He had on prior occasions lived in the Southern California area and had become acquainted with the smog conditions.

Late in 1969 the claimant began reading books and periodicals on the effects of smog, including its known health hazards. Neither the claimant nor any member

of his family were advised by a physician that they should leave the Los Angeles area for reasons of health. Although his own health and the health of his family were not immediately threatened, the claimant, on the basis of his reading, believed that over a period of time there would be a health hazard. The only ill effect of smog upon the claimant and his family has been occasional eye irritation and possible respiratory irritation, but, again, we have only conclusions based upon the claimant's opinion and not upon the diagnosis of a physician. The claimant's children attended school in the San Bernardino County area where on several occasions they, along with their classmates, were required to lie down on the floor at school to aid respiration during heavy smog.

Prior to leaving the Los Angeles area the claimant had declared bankruptcy.

In September 1970 there was a heavy smog attack in Portland, Oregon, in which public authorities advised persons with chronic lung or heart conditions to stay indoors.

A specialist in pulmonary matters and thoracic surgery testified at the hearing that the Los Angeles type of "photochemical smog" will affect the eyes and respiratory system and that carbon monoxide in the air could have possible serious effects of brain damage, early senility and other grave afflictions. The persons thus affected basically would be the infirm, the old and the very young. The specialist further stated that photochemical smog does not occur in Portland because there is not a sufficient amount of sun in that area, but that the Portland smog does cause the same carbon monoxide effects as the Los Angeles smog.

In reply to interrogatories submitted by the referee after the hearing the claimant stated that he selected Portland, Oregon since he believed the smog conditions were not as bad there as in Los Angeles; that the timing of his resignation was governed by his desire that his children finish the school year and by the fact that he was also seeking employment; that the claimant discussed possible transfer to an Idaho or a Minnesota

location but no transfer was available. Of particular interest is interrogatory No. 4 and the claimant's answer thereto, both of which are set out below:

"4. Could you have moved to some other area in Southern California which is less smog-infected such as areas near the coast and continued your employment and if not please indicate why not.

"No. The commuting from coastal areas would have been a process requiring personal exposure to carbon monoxide from freeway traffic and would be a definite threat to personal health. I feel and my research I believe shows that the only protection from L.A. Smog is to leave."

In a fact finding report dated August 6, 1970, of which we take official notice as a part of the Department's records, the claimant gave the following statement relating to the circumstances of his separation from employment:

"I was employed by Northwest Paper Co. as a Sr. Pulp Hauler. The rate of pay was 3.665 on a 7 day operation. The company had gone into a slack period where they were closing down 2 days per week. Notice of shutdowns was posted, usually, only 2 days prior to shutdown. This led to very unstable pay conditions. This situation along with the serious hazard presented to my children's health by the extremely dangerous air pollution led to my decision to relocate in a more healthy environment."

REASONS FOR DECISION

The legislative intent behind the system of unemployment insurance in California is set out in section 100 of the California Unemployment Insurance Code. The portion thereof pertinent to our decision is as follows:

"The Legislature therefore declares that in its considered judgment the public good and the general welfare of the citizens of the State require the enactment of this measure under the police power of the State, for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum."

The emphasis is on involuntary unemployment. While it is true that the seeming voluntary act of resigning from employment would eliminate a claimant from benefits, the legislature and the case law have provided for benefits in the event a voluntary termination is with good cause. (section 1256 of the California Unemployment Insurance Code) Good cause has been defined as existing "when the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action." (Appeals Board Decision No. P-B-27)

Subjectively speaking, it is obvious that the claimant herein feels that he has good cause for terminating his employment. Objectively, we must view his case as we must all others and measure his actions against the standard of the reasonable man sincerely desirous of retaining employment.

The facts clearly show the claimant did not move his family from Southern California on the advice of a physician but rather on the basis of the individual research he had done and the impressions he had received from the various news media. Consequently, there is no evidence of an immediate compelling medical reason for the move. In view of the claimant's economic situation, a reasonable man, in our opinion, would have taken steps to obtain employment in a smog-free area prior to quitting his job. The claimant herein has simply dropped everything and fled the area. We do not disregard his attempt to obtain a transfer from his employment which was rejected because of the employer's lack of business. Nevertheless, prudence dictates that the head of a family, in a factual situation such as is presented

by this case, should obtain employment in another area before abandoning the family's means of support, and, further, should seek competent, firsthand medical advice for his family.

The claimant rejected the alternative of moving to a smog-free coastal area in Southern California which might have served as an interim remedy until other employment could be obtained. His rejection is based upon his own opinion that the carbon monoxide content and concentration on Southern California freeways presented a hazard to his health. We reject this contention, unsupported as it is, summarily.

In short, smog, in and of itself, does not provide good cause within the meaning of the code, for voluntarily terminating employment. In the absence of medical evidence that there was an immediate compelling necessity for moving himself or any members of his family, we hold that the claimant has not acted as a reasonable person sincerely desirous of retaining employment and therefore has quit his work without good cause.

DECISION

The decision of the referee is affirmed. Benefits are denied. The employer's reserve account is relieved of benefit charges.

Sacramento, California, October 27, 1971.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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